

Bulletin No. 22

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE REFERENCE BUREAU

JAMES N. MOORE, Director

A Compilation of the Laws

Relating to

Marriage and Divorce

Compiled by

C. C. Breisch, Esq., R. S. Frey, Esq., and

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P R E F A C E

The bulletin is divided into two parts, the first containing the law
ence Bureau, with a view to making readily available the statutory
laws of the Commonwealth on subjects of general interest to the
citizens at large.

The compilation of the laws relating to marriage and divorce was
prompted by the numerous requests which the Bureau receives
requesting the law on these subjects.

The bulletin is divided into two parts, the first containing the law
relating to marriage and the second the law relating to divorce.
Each subject is followed by an analytical index.

JAMES N. MOORE,

Director, Legislative Reference Bureau.

Harrisburg, Penna., November 1, 1921.

CHAPTER I

MARRIAGE

1. **Applications for Marriage License. Qualifications Required. Application, License and Marriage Certificate to be Recorded.** No license to marry shall be issued except upon written and verified application to the clerk of the orphans' court. Such application shall contain a statement of the full Christian name and surname, color, occupation, birth place, residence, and ages of the parties: whether the marriage contemplated is the first, second or other marriage; and that neither of the contracting parties is afflicted with a transmissible disease; together with the full Christian name and surname, residence, color, occupation, and birthplace of their parents, including the maiden name of the mother; together with such other facts as may be necessary to determine whether any legal impediment to the proposed marriage exists. Such application shall be recorded by the clerk, together with the license and certificate of marriage, in a book provided for that purpose, which book shall be a public record.

Sec. 1, Act of July 24, 1913, P. L. 1013.

2. **Applications to be Uniform Throughout State. State Department of Health to Furnish Form.** Applications for license to marry shall be uniform throughout the State; and it is hereby made the duty of the State Department of Health to furnish a form therefor, to the several clerks at once upon the approval of this act: Provided, That said State Department of Health may revise said form, so furnished, from time to time, as may be advisable.

Sec. 2, Act of July 24, 1913, P. L. 1013.

3. **Consent of Parents or Guardian of Minors Required.** Nothing in this act shall be construed to authorize the marriage of persons not of legal age, without the consent of parents or guardians, as now provided by law.

Part of Sec. 5, Act of July 24, 1913, P. L. 1013.

4. **Examination of Applicants. Consent of Parents or Guardian. Clerk May Appoint Guardian in Certain Cases. Fees.** The clerk of the court shall inquire of the parties applying, either separately or together for marriage license, as aforesaid, on oath or affirmation, relative to the legality of the contemplated marriage, the age of the

parties, the consent of parents or guardians of such as are under the full age of twenty-one years, and any prior marriage or marriages and its or their dissolution; and, if there be no legal objection thereto, he shall grant such marriage license; or, the parties intending marriage may, either separately or together, appear before any magistrate, alderman, notary public, or justice of the peace of the township, ward, or county wherein either of the contracting parties resides, and in the county where the license is desired, who may and is hereby authorized to inquire of them touching the legality of their contemplated marriage, the age of the parties, the consent of parents or guardians, when required, and such prior marriage and dissolution thereof; and such inquiries and the answers thereto, having been subscribed and sworn to by the parties before such officer, may be forwarded to the clerk of the court, who, if satisfied after an examination thereof that the same is genuine and that no legal objection to the contemplated marriage exists, shall grant a license therefor. If any of the persons intending to marry by virtue of such license shall be under twenty-one years of age, the consent of their parents or guardians shall be personally given before such clerk, or certified under the hand of such parent or guardian, attested by two adult witnesses, and the signature of such parents or guardian shall be properly acknowledged before a notary public or other officer competent under the laws to receive acknowledgments. The certificate and oath shall be filed of record in said office, and entry of the same shall be made by the said clerk on the marriage license docket, as a part of the records of the issuing of said license; and for which he shall receive as his fee the sum of fifty cents in addition to the marriage license fee. When any such minor has no guardian, and the judge of the orphans' court is absent or not accessible, for any reason, the clerk of the orphans' court, or a duly appointed assistant clerk of said court, may appoint for such minor a guardian pro hac vice. A magistrate, alderman, notary public, or justice of the peace, for services rendered by him under the provisions of this act, shall be entitled to fifty cents.

Part of Sec. 3, Act of June 23, 1885, P. L. 146, as amended by Sec. 1, Act of May 28, 1915, P. L. 636.

This section was first amended by the Act of May 23, 1887. The subsequent amendments failed to amend the entire section as amended in 1887. The omitted part of this section is cited in the next succeeding section.

5. County to Furnish Necessary Blanks for Acknowledgments and Affidavits. Penalty for Unauthorized Licenses or False Returns. The clerk of the courts shall furnish magistrates, aldermen, or justices of the peace, at the cost of the proper county, all necessary blanks for acknowledgments and affidavit herein required. And if

any clerk of any of said courts shall in any other manner issue or sign any marriage license, or if any magistrate, alderman, or justice of the peace shall wilfully make any false return to the clerk of the court, he shall forfeit and pay any sum not exceeding one thousand dollars to and for the use of the party aggrieved.

Part of Sec. 3, Act of June 23, 1885, P. L. 146, as amended by Sec. 1, Act of May 23, 1887, P. L. 170.

This part of Sec. 3 was not amended by Act of May 28, 1915, P. L. 636, (Sec. 4 supra) and would therefore seem to be still in force.

6. **Who May not Secure License. Period License is Valid.** No license to marry shall be issued where either of the contracting parties is an imbecile, epileptic, of unsound mind, or under guardianship as a person of unsound mind: nor to any male person who is or has been, within five years, an inmate of any county asylum or home for indigent persons, unless it satisfactorily appears that the cause of such condition has been removed, and that such male applicant is physically able to support a family; or if, at the time of making application, either of the contracting parties is under the influence of an intoxicating liquor or narcotic drug; and no license shall be valid for a longer period than sixty days from the date of issue.

Sec. 3, Act of July 24, 1913, P. L. 1013.

7. **Procedure When License is Refused.** In those cases, when the right to a license is not made to appear, the clerk shall refuse to issue the same. At once, upon such refusal, he shall certify the proceeding to the proper orphans' court, without formality or expense to the applicants, who shall be notified by him of such action. Such application shall thereupon be, at the earliest practicable time, heard by the judge of said court, without a jury, in court or in chambers, during the term or in vacation, as the case may be; and his finding that a license ought to issue or ought not to issue shall be final, and the clerk shall act in accordance therewith; the true intent of this section being to secure for the applicants a hearing by said judge, without affirmative action by said applicants, and to give notice to them of such hearing, its time and place, without delay or expense.

Sec. 4, Act of July 24, 1913, P. L. 1013.

8. **Marriage Licenses. Fees. Certificates of Marriage. Solemnization of Marriage by Contracting Parties.** From and after the first day of October, Anno Domini one thousand eight hundred and eighty-five, no person within this Commonwealth shall be joined in marriage until a license shall have been obtained for that purpose from the clerk of the orphans' court in the county where the marriage is performed, which said license shall be in form as follows; to wit,—

State of Pennsylvania } ss:
County of }

To any minister of the gospel, justice of the peace, or other officers or persons authorized by law to solemnize marriage:

You are hereby authorized to join together in the holy state of matrimony, according to the rights and ceremonies of your church, society, or religious denomination, and the laws of the Commonwealth of Pennsylvania, A..... B..... and C..... D.....

Given under my hand and seal of the orphans' court of said county
of _____, at _____, this _____ day
of _____, Anno Domini one thousand _____

..... Clerk.

For which said license the said clerk shall receive the sum of one dollar.

The license shall have appended to it two certificates, numbered to correspond with said license (one marked original and one marked duplicate), which shall be in form as follows:

I hereby certify, that on the
day of one thousand, at
....., and

were, by me, united in marriage, in accordance with license issued by
the clerk of the orphans' court of _____ county,
Pennsylvania, numbered.

(Signed).....

(Minister of the gospel, justice of the peace, or alderman.)

And the certificate marked "original" shall, by the person solemnizing the marriage, be given to the persons married, and the certificate marked "duplicate" shall be returned to the clerk of the orphans' court of the proper county, as provided in section four of this act: Provided, That in all cases in which the parties intend solemnizing their marriage themselves, no such marriage shall take place until the

clerk of the orphans' court of the proper county shall certify their right so to do in declaration in the following form:

To A..... B..... and C..... D.....

Legal evidence having been furnished to me, in accordance with the act of Assembly approved the day of , one thousand eight hundred and eighty-five, this certifies, that I am satisfied that there is no legal impediment to you joining yourselves together in marriage.

A..... B....., Clerk.

And in lieu of the certificate above given, there shall be appended to such declaration two certificates in the following form:

We hereby certify that on the day of , one thousand eight hundred and , we united ourselves in marriage, at , in the county of , having first obtained from the clerk of the orphans' court of said county a declaration that he was satisfied that there was no existing legal impediment to our so doing.

A..... B.....

C..... D.....

We, the undersigned, were present at the solemnization of the marriage of A..... B..... and C..... D....., as set forth in the foregoing certificate.

D..... E.....

E..... F.....

Sec. 1, Act of June 23, 1885, P. L. 146, as amended by Sec. 1, Act of May 6, 1909, P. L. 446.

This amendment overlooked two former amendments to the same section, to wit: June 18, 1895, P. L. 202 and March 27, 1903, P. L. 80. (See Sections 9 and 10 infra).

9. Applicants to be Identified. From and after the first day of June, Anno Domini one thousand eight hundred and ninety-five, no person within this commonwealth shall be joined in marriage, until a license shall have been obtained for that purpose from the clerk of the orphans' court in the county wherein either of the contracting parties resides, or in the county where the marriage is performed: Provided, That one or both of the applicants shall be identified to the satisfaction of the clerk applied to for such license. (A license so

issued shall authorize the marriage ceremony to be performed in any county of this commonwealth :) Provided however, That a duplicate as provided for in section one of the marriage license act of June twenty-third, one thousand eight hundred and eighty-five, shall, in all cases, by the person solemnizing said marriage, be returned duly signed to the clerk of the orphans' court of the county in which the marriage license is issued, and shall by him be recorded, as provided in the fourth section of said act of June twenty-third, one thousand eight hundred and eighty-five.

Part of Sec. 1, Act of June 23, 1885, P. L. 146, as amended by Sec. 1, Act of June 18, 1895, P. L. 202.

This amendment was overlooked by the Act of May 6, 1909, P. L. 446, which amended the same section. It would seem that such part of this section as is not supplied by the Act of 1909, (Sec. 8 supra) is therefore still in force.

The part of this section in brackets seems to be inconsistent with the first part of the section and with the first part of section 8.

10. **Age and Former Marriages to be Stated.** Which said license shall be in form as follows, to wit:

State of Pennsylvania, }
County of } ss:

To any minister of the gospel, justice of the peace, or other officer or person authorized by law to solemnize marriage:

You are hereby authorized to join together, in the holy state of matrimony, according to the rights and ceremonies of your church, society or religious denomination, and the laws of the Commonwealth of Pennsylvania, A..... B....., of full age and never heretofore married, and C..... D..... likewise of full age and never heretofore married.

Given under my hand and seal of the orphans' court of said county of, at, this day of, Anno Domini one thousand.....

But, if either of said parties be not of full age of twenty-one years, then, in lieu of the words "of full age," his or her age shall be stated, and the fact of consent of parents or guardians shall likewise be stated; and if either of said parties shall have been married previously to the issuing of such license, then, in lieu of the words "never previously married," the number of times he or she shall have been previously married, and the mode by which said prior marriage or

marriages was or were dissolved, shall be stated, and, if by divorce, the cause for which such divorce shall have been granted.

Part of Sec. 1, Act of June 23, 1885, P. L. 146, as amended by Sec. 2, Act of March 27, 1903, P. L. 80.

This amendment was overlooked by the Act of May 6, 1909, P. L. 446, which amended the same section, but it is believed that the Act of 1909 and Sec. 1, Act of July 24, 1913, P. L. 1013, have supplied all the provisions of this act. (See Secs. 1 and 8 supra.)

11. Mayor of Third Class Cities Empowered to Solemnize Marriages. He (the mayor of third class cities) shall be empowered to take acknowledgments of any instruments in writing, solemnize marriages, and administer oaths and affirmations, and shall attest all of his acts with his official seal.

Part of Sec. 23, Act of May 27, 1919, P. L. 310.

12. Additional Fee for Commonwealth. For each marriage license issued after the first day of July, one thousand nine hundred and twenty-one, there shall be paid a fee of fifty cents in addition to the fees now imposed by the act to which this is a supplement. The said fee shall be collected by the clerk of the orphans' court issuing said license, and at the end of each month all moneys so collected by him shall be transmitted to the State Treasurer, to be placed in the general fund for the use of the Commonwealth.

Sec. 1, Act of May 11, 1921, P. L. 494, supplementing Act of June 23, 1885, P. L. 146.

13. Marriage License Docket to be kept by Clerk of Orphans' Court. The clerk of said court shall procure, at the cost of the proper county, and keep a suitable book in his office and among his records, to be called the marriage license docket in which he shall make a complete record of the issuing of said licenses, and all the matters, which he shall be required to ascertain, relative to the rights of said parties to attain said license, together with their ages and residences.

Sec. 2, Act of June 23, 1885, P. L. 146.

14. Docket to be Open to Public Inspection. Penalty. Every clerk of an orphans' court within this commonwealth shall, immediately after issuing any license for marriage in conformity with law, enter the same upon the marriage license docket, and said marriage license docket shall be open for inspection or examination of the public at all times during the hours when his office shall be open for the purpose of issuing marriage licenses. It shall be lawful for any person to make a copy or abstract of the entries contained in the said marriage license docket for the purpose of publication in

any regularly published daily or weekly newspaper, and it shall be lawful to publish said copy or abstract in any regularly published daily or weekly newspaper printed within the commonwealth.

Any clerk of an orphans' court who shall refuse or neglect to enter upon the marriage license docket any marriage license issued from his office immediately after it is issued, or shall fail to keep the marriage license docket open for inspection or examination by the public, or shall prohibit or prevent any person from making a copy or abstract of the entries in the marriage license docket for the purpose of publishing the same in any regularly published daily or weekly newspaper, shall, upon conviction in either of the aforesaid cases before an alderman or justice of the peace, be punished by a fine not exceeding fifty dollars for each and every offense.

Sec. 1, Act of May 22, 1895, P. L. 99.

15. Marriage Certificate to be Recorded. Penalties. The certificate provided for, marked "duplicate," in section one of this act, shall, by the person solemnizing said marriage, be returned, duly signed, to the clerk of the orphans' court who issued the license, within thirty days after the solemnizing of said marriage, and the said clerk, upon the reception of any certificate as provided for herein, shall immediately enter the same on the docket where the marriage license of said person is recorded; or if the marriage be solemnized by the parties themselves, the certificate of such marriage shall be signed by them, attested by two witnesses, and filed with said clerk as aforesaid; and said certificate shall be filed among the records of his office; and every minister, justice, or other person, who shall neglect or refuse to transmit said certificate to said clerk, within the time prescribed by this act, shall forfeit and pay the sum of fifty dollars; and the clerk who shall neglect or refuse to make such record, without any additional fee, shall also forfeit and pay the sum of fifty dollars. Said fines and forfeitures to be for the use of the county in which said marriage license was granted.

Sec. 4, Act of June 23, 1885, P. L. 146.

16. Unlawful to Solemnize Marriage Ceremony or be Attesting Witness Unless Parties Have License. Penalty. If any minister, justice, or any other officer or person shall solemnize the marriage ceremony, or shall be attesting witnesses to the same, within this commonwealth, without said persons having first obtained the proper license as hereinbefore mentioned and set forth, he or they so officiating or attesting, shall forfeit and pay the sum of one hundred dollars, to and for the use of the county in which said marriage was solemnized.

Sec. 5, Act of June 23, 1885, P. L. 146.

17. **Unlawful to Perform Ceremony When Either Party is Intoxicated.** Any judge, justice or clergyman who shall perform ceremony between parties, when either of said parties is intoxicated, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall pay a fine of fifty dollars, and be imprisoned, at the discretion of the court, not exceeding sixty days.

Sec. 4, Act of May 8, 1854, P. L. 663.

18. **Copies of the Record to be Received as Evidence.** A certified copy of the record of said marriage license and certificate, under the hand of said clerk and seal of said court, shall be received in all courts of this commonwealth as prima facie evidence of said marriage between the parties therein named.

Sec. 6, Act of June 23, 1885, P. L. 146.

19. **Collection of Fines or Forfeitures.** Any fine or forfeiture arising to the county, or any party, person or persons, in consequence of the violation of any of the preceeding sections of this act, shall be recovered by an action of debt in the name of said party, or persons, or county, as plaintiffs, in the same manner as other debts are recoverable by law, with the usual costs, in any court of record in any county of this commonwealth in which the defendant or defendants shall be found.

Sec. 7, Act of June 23, 1885, P. L. 146.

20. **Registration of Marriages by the State Department of Health. Enforcement of Marriage Laws.** It shall be the duty of the State Department of Health to have charge of the State system of registration of births, deaths, marriages, and disease; to prepare the necessary methods, forms, and blanks for obtaining and preserving such records and to insure the faithful registration of the same in the townships, boroughs, cities, counties, and in the Central Bureau of Vital Statistics at the capitol of the State. The said department shall be charged with the uniform and thorough enforcement of the law throughout the State, and shall, from time to time, recommend any additional forms and amendments that may be necessary for this purpose.

Sec. 1, Act of June 7, 1915, P. L. 900.

21. **Registration of Marriages in Philadelphia. Annual Abstract.** From and after the first day of July next, the city commissioner of the city of Philadelphia shall supply the health officer with separate books, in which he shall register, in the manner hereinafter directed, the returns made to him of the marriages which may be contracted, and of the births and deaths which may occur within the said city; he shall also cause an abstract of the same to be made in the month

of February next ensuing, and annually thereafter in said month, to the city councils, through the board of health, which abstract shall contain a statement of the marriages solemnized, and of the number of births and of deaths, with the reported causes thereof, which have occurred in the said city during the year next preceding the first day of January, with such other information and suggestions in relation thereto, as he may deem of practical utility for the promotion of public health, and of general interest to the city.

Sec. 1, Act of March 8, 1860, P. L. 130.

The city council now supplies the books herein provided for in pursuance of section 6, Act of May 23, 1874, P. L. 233.

Under provisions of Article VII, Act of June 25, 1919, P. L. 593, the health officer above referred to would be the Director of Public Health.

22. Registration Books in Philadelphia. Separate Indexes. The registry of marriages, births and deaths shall be kept in separate books; and there shall be general indexes to the record of all marriages, births and deaths, which indexes shall also be kept in separate books.

Sec. 10. Act of March 8, 1860, P. L. 130.

23. Forms Used in Registration Books in Philadelphia. In order to secure uniformity and dispatch in the registration herein provided for, the books shall contain, upon the margin of each page, printed titles, with corresponding blanks, for suitable entries for marriages, births and deaths, in the order, to wit:

MARRIAGES.

Full name of husband.
Occupation.
Residence.
Birth-place.
Age when married.
Full name of wife previous to marriage.
Residence.
Birth-place.
Age when married.
Time of marriage.
Color of the parties.
Ceremony employed.
Name of person pronouncing the marriage.
Residence of the last named person.
Date of certificate.
Date of registration.

24. **Certified Copy of Record in Philadelphia. Search of Records. Fees.** The health officer shall receive, for the use of the board of health, fifty cents for granting a certificate or certified copy of the record of any marriage, birth or death, and ten cents for making a search for either a marriage, birth or death, which sums shall be paid by the party applying for the certificate or search; but the said registers shall at all times be accessible to physicians, clergymen and lawyers without charge.

Sec. 11, Act of March 8, 1860, P. L. 130.

25. **Copy of Record in Philadelphia to be Used as Evidence.** The books or registers kept by the health officer, or a certificate duly certified by him as containing a copy of the record of any marriage, birth or death, shall hereafter be admitted in any court of the state as prima facie evidence of said marriage, birth or death.

Sec. 9, Act of March 8, 1860, P. L. 130.

26. **Quarterly Returns of Marriages in Philadelphia Certified to by Persons Performing Ceremonies.** It shall be the duty of every clergyman and every magistrate, and of the clerk or keeper of the records of all religious and other societies, and of every other person by or before whom any marriage may hereafter be solemnized or contracted, to make a faithful return of the same, at the expiration of every three months, to the health officer in the form of a certificate, which shall set forth, as far as the same can be ascertained, the full name of the husband, his occupation, the place of his birth, his residence and age, the date of marriage, the full name of the wife previous to the said marriage, and her age, the color of the parties, and the place where, and the name of the clergyman or other person by whom, the marriage ceremony was performed.

Sec. 7, Act of March 8, 1860, P. L. 130.

27. **Registration of Clergymen, Keepers of Records of Churches and Religious Societies, Magistrates and Other Persons Who May Solemnize Marriages in Philadelphia.** It shall be the duty of clergymen of all denominations, of clerks or keepers of the records of all churches and religious societies, as also of every magistrate, and of other persons by or before whom any marriage may hereafter be solemnized or contracted, and of every practicing physician, and of every practitioner of midwifery, and of every undertaker and superintendent or sexton of any cemetery or burying ground in the said city of Philadelphia, on or before the first day of July next ensuing, (the day in which the law goes into effect,) to report his, her or

their names and places of residence to the health officer, at the office of the board of health; and it shall be the duty of the health officer to have the same properly registered in index form, in suitable books to be furnished to the city commissioners at the order of the board of health. In the event of any of the persons above specified removing to any other place of residence, it shall be their duty to notify the health officer of the fact within thirty days after such removal, except where the persons removing shall cease to act in such official capacity as makes them subject to the provisions of this act.

Sec. 2, Act of March 8, 1860, P. L. 130.

28. Blanks Furnished for Returns in Philadelphia. The health officer shall keep on hand, at all times, a supply of blanks, for gratuitous distribution to all persons whose duty it shall be to make returns under this act. The said blanks shall be prepared in the form of books, and the margin shall correspond with the printed titles in the books of the health officer, as required by the twelfth section of this act: Provided, That all books, blanks and stationery necessary to be used in carrying out the intent and meaning of this act, shall be furnished, upon an order from the board of health, by the city commissioners, and shall be paid for by councils; and that the health officer, in consideration of such additional services, shall receive the sum of two hundred dollars besides his present salary, to be paid to him in the manner now directed by law.

Sec. 13, Act of March 8, 1860, P. L. 130.

28 (a). Compensation of Health Officer in Philadelphia. The health officer, in lieu of the compensation provided by the thirteenth section of said act, shall be paid in the manner therein provided, the sum of nine hundred dollars per annum.

Sec. 1, Act of April 23, 1864, P. L. 549, supplementing the Act of March 8, 1860, P. L. 130.

29. Penalty for Violating Provisions of Philadelphia Act. Every clergyman, and every magistrate, and every clerk or keeper of the records of all religious societies and every practising physician, and every person practising midwifery in the city aforesaid, and every undertaker and superintendent or sexton of any cemetery or burying ground in the city of Philadelphia, who shall neglect or refuse to leave his or her name and place of residence at the health office, as herein provided, and who shall refuse or neglect to perform any other of the duties required as aforesaid, shall forfeit and pay, for each offence, the sum of ten dollars, to be recovered in the manner and for the uses prescribed in an act, entitled "An act for establishing a health office, and to secure the city and port of Philadelphia from

the introduction of pestilential and contagious diseases, and for other purposes.”

Sec. 8, Act of March 8, 1860, P. L. 130.

30. Registration in Philadelphia of Marriages Performed Prior to March 8, 1860. Certificates of Such Marriages Furnished. Fees. The health officer of the city of Philadelphia shall register, in a book for that purpose, to be furnished by the city commissioners of said city, upon presentation, to him, of certificates, properly authenticated, by, either, the affidavit of the clergyman, who performed the marriage service, or, in case of his death, the affidavit of two persons that they were acquainted with his handwriting, and knew his signature, and that the signature, attached to such certificate of marriage, is the genuine signature of such clergyman, such marriages as have occurred prior to the passage of the act, to which this is a supplement; and upon demand made of him, by any person interested, he shall give a certificate of such registration of marriage, duly certified by him, which shall be of like force and effect, as evidence, or otherwise as the certificates provided for in the act, to which this is a supplement; and for such certificate, he shall be entitled to receive the same fees as are allowed in the said act.

Sec. 1, Act of March 22, 1865, P. L. 560.

31. Registration of Marriage in Philadelphia Contracted Prior to this Act When Marriage Certificate and Original Record are Missing. Where any person may have been married, under the laws of the State of Pennsylvania, previous to the date of the passage of this act, and who may have not received, or who may have lost the original marriage certificate, and the record of the said marriage may have been lost, mislaid, or destroyed, or the place where the said record is deposited, unknown to the parties interested, the fact may be proven by the affidavit of the party, or parties, so married, and the name of the person who performed the ceremony being given, that due and diligent search has been made for said record, and that the same could not be found; and the identity and truth of the party, or parties, be verified by at least two witnesses, who may have known the parties so married, to have lived and cohabited together, as husband and wife, and that their marriage was never doubted, or disputed, that an acknowledgment was made in their presence, that they were husband and wife, and the proof being satisfactory to the health officer, a record shall be made, as specified under the law, approved March eighth, one thousand eight hundred and sixty, and the supplements thereto.

Sec. 1, Act of April 11, 1866, P. L. 631.

32. Registration of Marriages in Cities of Second Class. Registration of Persons Authorized to Solemnize Marriages. Notice to be Given on Change of Residence. The Bureau of Health shall furnish separate books in which shall be registered in the manner hereinafter directed the returns made to said bureau of the marriages which may be contracted, and of the births and deaths which may occur in the said cities. It shall be the duty of clergymen of all denominations as also of every magistrate, and of other persons by or before whom any marriage may hereafter be solemnized or contracted, and of every practicing physician, and every practitioner of midwifery, and of every undertaker and superintendent or sexton of any cemetery or burial ground in the said cities, immediately on and after the passage of this act to report his, her or their names, and places of residence to the said Bureau of Health at the office of the same, and it shall be the duty of the said Bureau of Health to have the same properly registered in index form in suitable books to be furnished by the said cities, and in the event of any of the persons above specified removing to any other place of residence, it shall be their duty to notify the said bureau of the fact, within thirty days after such removal, except where the persons removing shall cease to act in such official capacity as makes them subject to the provisions of this act.

Sec. 34, Act of June 26, 1895, P. L. 350. (Penalty provided for violation of this section, see Sec. 36 *infra*.)

The Department of Public Health now exercises all the powers and duties formerly exercised by the Bureau of Health. See Act of April 1, 1909, P. L. 87.

33. Persons Solemnizing Marriages to Make Quarterly Returns to Department of Public Health in Cities of the Second Class. It shall be the duty of every clergyman and every magistrate, and of every other person by or before whom any marriage may hereafter be solemnized or contracted, to make a faithful return of the same on the first days of January, April, July, and October of each year, or within ten days thereafter, to said bureau of health, in the form of a certificate, which shall set forth, as far as the same can be ascertained, the full name of the husband, his occupation, the place of his birth, his residence and age, the date of the marriage, the full name of the wife previous to the said marriage and her age, residence and birth-place, the color of the parties, the place where married, the name of the clergyman, or other person by whom the marriage ceremony was performed, his residence, the ceremony employed, and the date of the return. In the event of any such clergyman, magistrate, or other person as aforesaid, having no returns to make, it shall be his or her duty to signify the same by delivering a blank certificate or return, duly signed by them, to the said bureau of health on the

first day of each and every quarter, as aforesaid, or within ten days thereafter.

Sec. 38, Act of June 26, 1895, P. L. 350, as amended by Sec. 10, Act of May 2, 1899, P. L. 164.

For penalty provided for violation of this section, see Sec. 36, *infra*.

34. **Forms for Registration in Cities of Second Class.** In order to secure uniformity and dispatch in the registration herein provided for, the books shall contain upon the margin of each page, printed titles with corresponding blanks for suitable entries for marriages, births and deaths, in the order to wit:

MARRIAGES.

Full name of husband.

His occupation.

Residence.

Birthplace.

Age when married.

Date of the marriage.

Place where married.

Color of the parties.

Ceremony employed.

Name of the person performing the ceremony.

His residence.

Date of return.

Date of registration.

Part of Sec. 41, Act of June 26, 1895, P. L. 350.

35. **Registration of Marriages in Cities of Second Class. Records Open to Public Inspection. Copy to be Used as Evidence.** The registry of said marriages, births and deaths shall be kept in separate books, and there shall be general indexes to the records of marriages, births and deaths, which indexes shall also be kept in separate books and shall at all reasonable times be open to the examination of persons interested therein. The books or registers kept by the bureau of health, or a certificate duly certified by it as containing a copy of the record of any marriage, birth or death, shall hereafter be admitted in any court of the State, as *prima facie* evidence of said marriage, birth or death.

Sec. 40, Act of June 26, 1895, P. L. 350, as amended by Sec. 12, Act of May 2, 1899, P. L. 164.

36. **Penalties for Violation of Second Class City Act.** Any and all persons violating or offending against, or failing, neglecting or

refusing to comply with, any and all of the provisions of sections one, two, three, four, five, six, seven, eight, nine and ten of this act, and sections thirty-four, thirty-five and thirty-six of the act to which this is a supplement, shall forfeit and pay for every such offense a fine not exceeding one hundred dollars, to be recoverable before any alderman or police magistrate of such cities of the second class, and in default of payment thereof, be imprisoned in the common jail of the county in which such conviction takes place for a period not exceeding thirty days.

Sec. 39, Act of June 26, 1895, P. L. 350, as amended by Sec. 11, Act of May 2, 1899, P. L. 164.

37. Transcript of Marriage Contract to be Furnished. Fee. Penalty. Every person in whose care or profession may be found the record kept by any minister of the gospel, judge, alderman or justice of the peace, of any marriage contract solemnized by or in the presence of such minister of the gospel, judge, alderman or justice of the peace, shall, on application made to him, and the payment or tender of a fee of fifty cents in every case, deliver to the person applying for the same, a full transcript of the record or entry in such case, with a proper certificate of the correctness of said transcript, and any person having possession of such record as aforesaid, neglecting or refusing to comply with the provisions of this section, shall be liable to a penalty of fifty dollars, to be sued for and recovered with costs, before any justice of the peace of the proper county, by any person aggrieved, one-half to be paid to the person suing for the same, and the other half to the county in which suit is brought.

Sec. 2, Act of April 10, 1849, P. L. 549.

38. Unlawful for First Cousins to be Joined in Marriage. From and after the first day of January, Anno Domini one thousand nine hundred and two it shall be unlawful for any male person and female person, who are of kin of the degree of first cousins, to be joined in marriage.

All marriages contracted in violation of the provisions of the first section of this act are hereby declared void.

Sec. 1, Act of June 24, 1901, P. L. 597.

39. Marriages Within Degrees of Consanguinity and Affinity Prohibited. If any person shall commit incestuous fornication or adultery, or intermarry within the degrees of consanguinity or affinity, according to the following table, (established by law), he or she shall, on conviction, be sentenced to pay a fine not exceeding five hundred dollars, and to undergo an imprisonment by separate

or solitary confinement at labor, not exceeding three years; and all such marriages are hereby declared void.

The table of degree of consanguinity and affinity is as follows:

Degrees of Consanguinity.

A man may not marry his mother.

- Do.....do.....father's sister.
- Do.....do.....mother's sister.
- Do.....do.....sister.
- Do.....do.....daughter.
- Do.....do.....the daughter of his son or daughter.....

A woman may not marry her father.

- Do.....do.....father's brother.
- Do.....do.....mother's brother.
- Do.....do.....brother.

A woman may not marry her son.

- Do.....do.....the son of her son or daughter.

Degrees of Affinity.

A man may not marry his father's wife.

- Do.....do.....son's wife.
- Do.....do.....son's daughter.
- Do.....do.....wife's daughter.
- Do.....do.....the daughter of his wife's son or daughter.

A woman may not marry her mother's husband.

- Do.....do.....daughter's husband.
- Do.....do.....husband's son.
- Do.....do.....the son of her husband's son or daughter.

Sec. 39, Act of March 21, 1860, P. L. 393.

40. Husband or Wife Guilty of Adultery not to Marry Person With Whom Crime was Committed During Life of Former Wife or Husband. The husband or wife, who shall have been guilty of the crime of adultery, shall not marry the person with whom the said crime was committed during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or affect or render illegitimate any children born of the body of the wife during coverture.

Sec. 9, Act of March 13, 1815, P. L. 150.

41. **Certain Marriages Legalized.** All marriages heretofore contracted between parties within the degrees of affinity, as prescribed in the 39th section of the act of 21st March 1860 of which issue is born, are hereby legalized, and the child or children of such marriages shall have all the rights and privileges of children born in lawful wedlock: Provided, That nothing in this act shall relate to marriages within the degrees of consanguinity as now prohibited by law.

Sec. 1, Act of April 6, 1868, P. L. 67.

42. **Wedding Serenade. Use of Explosives, etc., Unlawful.** That it shall be unlawful for any person to use any cannon, gun, revolver, or other explosive device at any serenade of any wedding within this Commonwealth.

Sec. 1, Act of July 11, 1917, P. L. 817.

43. **Penalty.** Any person violating the provisions of this act shall, upon conviction thereof, be sentenced to pay a fine of not less than twenty-five or more than fifty dollars, or undergo an imprisonment of not less than thirty or more than sixty days, or both, in the discretion of the court.

Sec. 2, Act of July 11, 1917, P. L. 817.

44. **Illegitimate Children Legitimated.** In any and every case where the father and mother of an illegitimate child or children shall enter into the bonds of lawful wedlock and cohabit, such child or children shall thereby become legitimated, and enjoy all the rights and privileges as if they had been born during the wedlock of their parents.

Sec. 1, Act of May 14, 1857, P. L. 507.

This act was repealed by the Act of June 7, 1917, P. L. 443, in so far as it relates to inheritance.

45. **Illegitimate Children Born Prior to May 14, 1857, Legitimated.** The act entitled "An act to legitimate children born out of lawful wedlock," passed the 14th day of May 1857, shall be taken to apply to all cases within the terms of that act, prior to its date, as well as those subsequent thereto: Provided, That no estate already vested shall be divested by this act.

Sec. 1, Act of April 21, 1858, P. L. 413.

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CHAPTER II

DIVORCE.

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CHAPTER II

DIVORCE.

ARTICLE I

1. Constitutional Provision Prohibiting Divorces by Special Acts of Assembly. The general assembly shall not pass any local or special law granting divorces.

Part of Article 3, Sec. 7 of the Constitution of Pennsylvania.

ARTICLE II

GROUND FOR DIVORCE

(a) From the Bonds of Matrimony.

2. **Impotency, Bigamous Marriage, Adultery, Desertion by Husband or Wife and Cruel and Barbarous Treatment and Indignities to the Person by the Husband.** When a marriage hath been heretofore or shall hereafter be contracted and celebrated between any two persons, and it shall be judged in the manner hereinafter mentioned, that either party, at the time of the contract, was and still is naturally impotent or incapable of procreation; or that he or she hath knowingly entered into a second marriage, in violation of the previous vow he or she made to the former wife or husband, whose marriage is still subsisting; or that either party shall have committed adultery; or wilful and malicious desertion and absence from the habitation of the other, without a reasonable cause, for and during the term and space of two years, or when any husband shall have, by cruel and barbarous treatment, endangered his wife's life, or offered such indignities to her person as to render her condition intolerable, and life burdensome, and thereby force her to withdraw from his house and family; in every such case, it shall and may be lawful for the innocent and injured person to obtain a divorce from the bond of matrimony.

Sec. 1, Act of March 13, 1815, P. L. 150.

3. **Cruel and Barbarous Treatment and Indignities by Wife. Alimony.** Where a wife shall have, by cruel and barbarous treatment or indignities to his person, rendered the condition of her husband intolerable, or life burdensome: Provided, That in case of divorce under this act, if the application shall be made on the part of the husband, the court granting such divorce may allow such support or alimony to the wife as her husband's circumstances may admit of, and as said court may deem just and proper.

Cl. 3, Sec. 1, Act of May 8, 1854, P. L. 644, as amended by Act of June 25, 1895, P. L. 308.

4. **Desertion.** The jurisdiction of the several courts of common pleas of this Commonwealth shall hereafter extend to all cases of divorce from the bonds of matrimony, for the cause of wilful, malicious and continued desertion by either of the parties from the habitation of the other, without reasonable cause; and it shall be lawful for either party to make application in such case, by petition or libel, to the proper court, in accordance with the provisions of the several acts of assembly now in force, at any time not less than six months after such cause of divorce shall have taken place; but the said court

shall not proceed to make a final decree, divorcing the said parties from the bonds of matrimony aforesaid, until after the expiration of two years from the time at which such desertion took place.

Sec. 5, Act of April 26, 1850, P. L. 590.

5. Fraud, Force or Coercion. In addition to the cases now provided for by law, it shall be lawful for the courts of common pleas of this Commonwealth to grant divorces in the following cases:

Where the alleged marriage was procured by fraud, force or coercion, and has not been subsequently confirmed by the acts of the injured party.

Cl. 1, Sec. 1, Act of May 8, 1854, P. L. 644.

6. Conviction of Crime. When either of the parties shall have been, either within or without this State, convicted as principal, or as accessory either before or after the fact, of the crime of arson, burglary, embezzlement, forgery, kidnapping, larceny, murder, either in the first or second degrees, assault with intent to kill, voluntary manslaughter, perjury, rape, robbery, sodomy, buggery, treason, or misprision of treason, and be sentenced by a competent court, having jurisdiction, to imprisonment, for any term exceeding two years: Provided, That such application for a divorce be made by the husband or wife of the party so convicted and sentenced.

Cl. 2, Sec. 1, Act of May 8, 1854, P. L. 644, as amended by Act of May 1, 1909, P.L. 374.

7. Marriages Within the Degrees of Sanguinity and Affinity Void. All marriages within the degrees of consanguinity or affinity, according to the table established by law, are hereby declared void, to all intents and purposes; and it shall and may be lawful for the courts of common pleas of this Commonwealth, or any of them, to grant divorces from the bonds of matrimony in such cases; and the parties shall be subject to the like penalties as are contained in the act against incest. But when any of the said marriages shall not have been dissolved during the lifetime of the parties, the unlawfulness of the same shall not be inquired into after the death of either of the husband or wife.

Sec. 5, Act of March 13, 1815, P. L. 150.

See Chap. 1 on Marriage, Sec. 39 for tables of consanguinity and affinity.

8. Bigamous Marriage Void. In all cases where a supposed or alleged marriage shall have been contracted, which is absolutely void, by reason of one of the parties thereto having a husband or wife

living at the time, the courts of common pleas shall have power to decree the said supposed or alleged marriage to be null and void, upon the application of an innocent or injured party; and the jurisdiction shall be exercised, and proceedings conducted, according to the principles and forms which are or shall be prescribed by law for cases of divorce from the bond of matrimony.

Sec. 1, Act of April 14, 1859, P. L. 647.

A marriage void by reason of bigamy of one of the parties is void, even though proceedings were not begun under this act to have it judicially declared void: *Klaas v. Klaas*, 14 Super. Ct. 550.

9. Bigamous Marriage on Rumor of Death of Spouse. If any husband or wife, upon any false rumor, in appearance well founded, of the death of the other when such other has been absent for the space of two whole years, hath married, or shall marry again, he or she shall not be liable to the pains of adultery; but it shall be in the election of the party remaining unmarried. at his or her return, to insist to have his or her former wife or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose within six months after such return, the court may and shall sentence and decree accordingly.

Sec. 6, Act of March 13, 1815, P. L. 150.

(b) From Bed and Board. Alimony.

10. Abandonment of Family. Cruel and Barbarous Treatment and Indignities to Person of Wife or Husband. Alimony. If any husband shall maliciously either abandon his family, or turn his wife out of doors, or by cruel and barbarous treatment endanger her life, or offer such indignities to her person as to render her condition intolerable, or life burdensome, and thereby force her to withdraw from his house and family, it shall be lawful for the court of common pleas of the respective counties, upon complaint and due proof thereof made, in the manner prescribed in the act to which this is a supplement, to grant the wife a divorce from bed and board, and also to allow her such alimony as her husband's circumstances will admit of, so as the same do not exceed the third part of the annual profit or income of his estate, or of his occupation and labor; which shall continue until a reconciliation shall take place, or until the husband shall, by his petition or libel, offer to receive and cohabit with her again, and to use her as a good husband ought to do; and then, in such case, the court may either suspend the aforesaid sentence or decree, or in case of her refusal to return and cohabit, under the protection of the court, discharge and annul the same according to their discretion;

and if he fail in performing his said offers and engagements, the former sentence or decree may be revived and enforced, and the arrears of the alimony ordered to be paid.

Sec. 1, Act of Feb. 26, 1817, P. L. 67.

ARTICLE III

JURISDICTION.

11. Residence in State for One Year Required. No person shall be entitled to a divorce from the bond of matrimony, by virtue of this act, who is not a citizen of this state, and who shall not have resided therein at least one whole year previous to the filing his or her petition or libel.

Sec. 11, Act of March 13, 1815, P. L. 150.

"The word citizen as used in this section shall not be so construed as to exclude any party who shall, for one year, have had a bona fide residence within this Commonwealth previous to the filing of his or her petition or libel."

From Sec. 2, Act of May 8, 1854, P. L. 644. See Sec. 27 of this chapter.

12. Where Both Parties Reside in State but in Different Counties. Where a husband and wife shall be resident in different counties of this Commonwealth, and while they are so severally resident a cause of divorce shall arise, the injured husband or wife may, at his or her option, institute and prosecute proceedings in divorce either in the county of his or her own residence, or in the county wherein the offending husband or wife shall be resident and the cause of divorce shall have arisen: Provided, That whenever an action in divorce shall be instituted, under the provisions of this act, in a county wherein the respondent is resident, the same being a different county from that in which the libellant resides, personal service of the subpoena in divorce shall be had upon the respondent, if he or she can be found within said county; otherwise, service by advertisement in that county shall be had, in the manner now provided by law.

Sec. 1, Act of April 26, 1905, P. L. 309.

13. Where Either of Parties Resides in Another State or County. The jurisdiction conferred in and by the said act to which this is a supplement, is hereby extended to all cases of divorce from the bonds of matrimony, for the causes therein mentioned, where either of the parties were, or may be, at the time of the occurring of said cause, domiciled in another state or country: Provided, That no application for such divorce shall be made, unless the applicant therefor shall be a citizen of this Commonwealth, or shall have resided therein

for the term of one year, as provided by the existing laws of this Commonwealth.

Sec. 1, Act of April 22, 1858, P. L. 450, supplementing the Act of March 9, 1855, P. L. 68.

14. Where Female Citizen of this State Marries Citizen of Another State or Country, and by Reason of His Acts is Obligated to Return to this State. It shall be lawful for the several courts of common pleas in this commonwealth to entertain jurisdiction of all cases of divorce from the bonds of matrimony and from bed and board for the causes of adultery committed by the husband, or wilful and malicious desertion on the part of the husband and absence from the habitation of the wife without reasonable cause, for and during the term and space of two years, or where any husband shall have, by cruel and barbarous treatment, endangered his wife's life or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby force her to withdraw from his house and family; where it shall be shown to the court by any wife that she was formerly a citizen of this commonwealth, and that having intermarried with a citizen of any other state or any foreign country, she has been compelled to abandon the habitation and domicile of her husband in such other state or foreign country by reason of his adultery or wilful and malicious desertion and absence from the habitation of the wife without reasonable cause, for and during the term and space of two years, or by cruel and barbarous treatment endangered his wife's life or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby force her to withdraw from his house and family, and has thereby been forced to return to this commonwealth in which she had her former domicile: Provided, That where, in any such case, personal service of the subpoena cannot be made upon such husband by reason of his non-residence within this commonwealth, the court, before entering a decree of divorce, shall require proof that in addition to the publication now required by law, that actual or constructive notice of said proceedings has been (given) to such non-resident husband, either by personal service or by registered letter to his last known place of residence, and that a reasonable time has thereby been afforded to him to appear and defend in said suit: And provided further, That no application for such divorce shall be made, unless the applicant therefor shall be a citizen of this commonwealth, or shall have resided therein for the term of one year prior to filing her petition or libel as provided by the laws of this commonwealth.

Sec. 1, Act of June 20, 1893, P. L. 471.

15. Causes Occurring Outside the Commonwealth. Residence for One Year Required. The several courts of common pleas in this

Commonwealth shall entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the cause of wilful and malicious desertion on the part of either the husband or wife, and absence from the habitation of the other, without a reasonable cause, for and during the term and space of two years, as provided for in the act of Assembly to which this is a supplement; or for the adultery of either husband or wife, or for the cause of personal abuse, or for such conduct on the part of either husband or wife as to render the condition of the other party intolerable and life burdensome; or when any husband shall have, by cruel and barbarous treatment endangered his wife's life, or offered such indignities to her person as to render her condition intolerable and life burdensome, and thereby forced her to withdraw from his house and family; notwithstanding the said causes of divorce have occurred or shall hereafter occur in a foreign country, or in a country, state or territory subject to the jurisdiction of the United States: Provided, That no application for such divorce shall be made unless at the time the said cause or causes of divorce occurred the applicant was a citizen of this Commonwealth: Provided further, That the said applicant shall have resided therein for the term of one year, as provided for by the existing laws of this Commonwealth: And provided, That if the procedure shall be otherwise correct, and a jury shall have rendered a verdict in favor of the libellant, or, when the case shall have been heard without a jury trial, and the court shall be satisfied that the evidence warrants the granting of a divorce, then in such cases a decree to that effect shall be made by such court.

Sec. 1, Act of April 28, 1903, P. L. 326, as amended by the Act of April 13, 1911, P. L. 60.

16. Causes Occurring Outside the Commonwealth. The several courts of common pleas shall have jurisdiction in any action in divorce, for any cause now or hereafter allowed by law, notwithstanding the fact that the marriage of the parties and the cause for divorce occurred outside of this Commonwealth, and that both parties were at the time of the occurrence of said cause domiciled without this Commonwealth, and that the respondent has been served with the subpoena only by publication as required by law. In such cases the libellant shall be a competent witness to prove his or her residence within this Commonwealth.

Sec. 1, Act of May 9, 1913, P. L. 191.

17. Residence in State for One Year Required. The said courts shall also entertain jurisdiction of all cases of divorce from the bonds of matrimony, for any cause now or hereafter provided for by law, when the libellant or applicant for such divorce shall, at the time of filing the petition or libel in divorce, have been a resident of this Commonwealth for one year previous to the filing of the petition or libel in divorce.

Sec. 2, Act of May 9, 1913, P. L. 191.

18. **Causes Occurring Outside the Commonwealth. Residence for One Year Required.** It shall be lawful for the said several courts to entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the causes of desertion as aforesaid, or adultery, notwithstanding the parties were, at the time of the occurrence of said causes, domiciled in any other state: Provided, That no such divorce shall be granted, unless the applicant therefor shall be a citizen of this commonwealth, or shall have resided therein for the term of one year, as provided for by existing laws.

Sec. 6, Act of April 26, 1850, P. L. 590.

19. **Causes Occurring Outside the Commonwealth. Residence for One Year Required.** It shall be lawful for the several courts of common pleas in this commonwealth, to entertain jurisdiction of all cases of divorce from the bonds of matrimony, for the cause of personal abuse, or for such conduct on the part of either the husband or wife, as to render the condition of the other party intolerable and life burdensome, notwithstanding the parties were at the time of the occurring of said causes domiciled in another state: Provided, That no application for such divorce shall be made unless the applicant therefor shall be a citizen of this commonwealth, or shall have resided therein for the term of one year, as provided for by the existing laws of this commonwealth.

Sec. 1, Act of March 9, 1855, P. L. 68.

ARTICLE IV

PROCEDURE.

(a) Proceedings to obtain a Divorce.

20. **Filing of Libel. Return of Subpoena. Rule for Jury Trial. Appointment of Master.** If any person hath been or shall be injured as aforesaid, the husband or the wife may exhibit his or her petition or libel to the judges of the court of common pleas of the proper county where the injured party resides, in term time, or to one of the judges of the same court in the vacation, at least thirty days before the next term, setting forth therein particularly and specially the cause of his or her complaint, and shall, together with such petition or libel, also exhibit an affidavit on oath or affirmation, taken before one of the same judges or any person in the county legally authorized to take acknowledgments, that the facts contained in the said petition or libel are true to the best of his or her knowledge and belief, and that the said complaint is not made out of

levity or by collusion between the said husband and wife, and for the mere purpose of being freed and separated from each other, but in sincerity and truth for the causes mentioned in the said petition or libel; and thereupon a subpoena shall issue from the said court, signed by one of the judges thereof, directed to the party so complained against, commanding him or her to appear at the next or any subsequent court of common pleas to answer the said petition or libel; and, upon due proof at the return of the said subpoena that the same shall have been served personally upon the said party, wherever found, or that a copy had been given to him or her on or before the return day of the same, the said court shall and may make such preparatory rules and orders in the cause that the same may be brought to a hearing and determined at the term to which said process may be returnable, or afterwards, at which hearing the court may determine the same ex parte, if necessary; but either of the parties who shall desire any matter of fact, that is affirmed by the one and denied by the other, to be tried by a jury, may take a rule upon the opposite party, to be allowed by a judge of the court of common pleas, to show cause why the issues of fact set forth in the said rule shall not be tried by a jury, which said rule shall be served upon the opposite party or his or her counsel. Upon the return of said rule, after hearing, the court may discharge it or make it absolute, or frame issues itself, and only the issues as ordered by the court shall be tried accordingly; but such rule shall not be made absolute when, in the opinion of the court, a trial by a jury cannot be had without prejudice to public morals. When neither of the parties takes a rule as aforesaid, or when after hearing the rule is discharged, the court may proceed to hear the cause, or may, upon motion of either party, appoint a master to take the testimony and return the same to the court, together with a report of the proceedings had before him and his opinion of the case, and may, upon the application of either party, and upon such terms as it may order, authorize and direct the master to take testimony of witnesses in any other country, State, or territory, subject to the jurisdiction of the United States, or in any foreign country. And the said court shall have power to adopt rules regulating the proceedings before the master and fixing his fees.

Whenever heretofore any subpoena in divorce has been regularly issued according to law, and the sheriff of the proper county has served such subpoena personally on the respondent therein any time prior to the return day thereof, or whenever the sheriff of the proper county has at any time prior to such return day made oath to a return of non est inventus to such subpoena, whether such sworn return be filed with the prothonotary before or after such return day,.....in all such cases such personal service shall be deemed lawful and valid,

and such return of non est inventus and all proceedings in divorce otherwise valid in law based on such service or such return are hereby validated and made good in law.

Sec. 2, Act of March 13, 1815, P. L. 150, as amended by Act of May 8, 1919, P. L. 164.

See also, on service of subpoena, sections 12 and 14 of this chapter.

21...Prothonotary to Sign all Subpoenas in Divorce. All subpoenas issued pursuant to a petition or libel for divorce shall be signed by the prothonotary of the court out of which it issues in the same manner as writs and process in other cases.

Sec. 1, Act of May 11, 1921, P. L. 499.

22. Who May Take Affidavits to Petition. From and after the passage of this act it shall be lawful for notaries public, prothonotaries or clerks of the courts to administer oaths or affirmations and take affidavits to the petition or libel and all other papers and proceedings concerning divorces.

Sec. 1, Act of May 22, 1895, P. L. 105.

23. Alias Subpoena in Divorce. Publication. If upon the return of the said subpoena, proof shall be made, that the said party could not be found in the said county, an alias subpoena shall issue, returnable the first day of the next or any subsequent term, and be served personally in manner aforesaid, and if so served, the same proceedings shall be had as are directed and authorized in the 2d section of this act. And if, on the return of the said alias subpoena, proof shall be made, that the said party could not be found in the said county, the sheriff of the same shall cause notice to be published in one or more newspapers printed within or nearest to the said county, for four weeks, successively, prior to the first day of the then next term of said court, requiring the said party to appear on the said day, to answer to the said complaint, at which term, or any subsequent term, the same proceedings shall be had as are authorized and directed by the 2d section of this act.

Sec. 3, Act of March 13, 1815, P. L. 150.

24. Presentation of Libel. Awarding of Subpoenas. Return of Subpoena. From and after the passage of this act, any libel in divorce may be presented to any court of common pleas, or to a judge thereof, at any time, in term time or in vacation, and a subpoena may be awarded thereon at the time of the presentation of said libel, without regard to any return day in court, which said subpoena may be made returnable to the next or any subsequent quarterly or monthly

return day; provided the time to which it is made returnable be at least thirty days after the awarding of said subpoena.

Sec. 1, Act of April 22, 1905, P. L. 293.

25. Return of Alias Subpoena and Order of Publication. Any alias or pluries subpoena or order of proclamation may be made returnable to any quarterly or monthly return day, in the discretion of the court or judge awarding the same: Provided, That the said return shall be at least thirty days after the awarding of such subpoena or proclamation: And provided further, That every proclamation shall be published at least once a week for four successive weeks, as now required by law.

Sec. 2, Act of April 22, 1905, P. L. 293.

26. Rules of Court. The several courts of common pleas are hereby authorized to make such rules of practice as may be necessary to carry this act into effect.

Sec. 3, Act of April 22, 1905, P. L. 293.

27. Preceding Acts Regulating Practice Made to Apply to Cases Under Provisions of Act Making New Grounds for Divorce. The proceedings in cases embraced within the provisions of this act, shall be the same as those prescribed by the act, entitled "An act concerning divorces," approved the 13th day of March, 1815, and the several acts supplementary thereto, with the like right of appeal as is therein given. The word citizen, used in the 11th section of the said act, shall not be so construed as to exclude any party who shall, for one year, have had a bona fide residence within this Commonwealth, previous to the filing of his or her petition or libel.

Sec. 2, Act of May 8, 1854, P. L. 644.

The cases referred to in this section are the cases begun under the provisions supplying additional grounds for divorce as set forth in the first section of this act. See section 3 of this chapter.

28. Time for Filing Petition When the Cause is Desertion. The jurisdiction of the several courts of common pleas of this Commonwealth shall hereafter extend to all cases of divorce from the bonds of matrimony, for the cause of wilful, malicious and continued desertion by either of the parties from the habitation of the other, without reasonable cause; and it shall be lawful for either party to make application in such case, by petition or libel, to the proper court, in accordance with the provisions of the several acts of assembly now in force, at any time not less than six months after such cause of divorce shall have taken place; but the said court shall not proceed to make a final decree, divorcing the said parties from the bonds of

matrimony aforesaid, until after the expiration of two years from the time at which such desertion took place.

Sec. 5, Act of April 26, 1850, P. L. 590.

29. Time of Filing Petition When the Cause is Desertion. Where the wife petitions the court for a divorce under the provisions of section first of this act on the ground of wilful, malicious and continued desertion by the husband from the habitation of the wife without reasonable cause, it shall be lawful for the wife to make application in such case by petition or libel to the proper court at any time not less than six months after such cause of divorce shall have taken place, but the said court shall not proceed to make a final decree divorcing the said parties from the bonds of matrimony aforesaid until after the expiration of two years from the time at which such desertion took place.

Sec. 2, Act of June 20, 1893, P. L. 471.

30. Proceedings After Filing of Subpoena. The proceedings in cases embraced within the provisions of this act, except so far as they are prescribed by this act, shall be the same as those prescribed by the act, entitled "An act concerning divorces," approved the thirteenth day of March, Anno Domini one thousand eight hundred and fifteen, and the several acts supplementary thereto, with the like right of appeal as is therein given.

Sec. 3, Act of June 20, 1893, P. L. 471.

31. Act to Extend to Pending and Future Proceedings. The provisions of this act shall apply to all suits or proceedings for divorce which may be pending in the courts of this Commonwealth at the time it is approved, and to all subsequent divorce proceedings.

Sec. 4, Act of June 20, 1893, P. L. 471.

32. Procedure in Cases of Hopeless Insanity of Either Party
Clause A. That from and after the passage of this act, in cases where the husband or wife is a hopeless lunatic of non compos mentis, the courts of common pleas of this Commonwealth are invested with the authority to receive a petition or libel for divorce; the affidavit, as now required by law to such petition for libel, to be made by the petitioner; and the service of subpoena in divorce shall be made as now provided, such service to be made upon the committee of such lunatic; and all the provisions of the several acts relating to divorces shall apply to all applications made under this act.

Clause B. That the fact of the lunacy of the husband or wife, and such circumstances as may be sufficient to satisfy the mind of the court as to the truth of the allegation, shall be set forth in the petition;

and upon the hearing of the case before the court, a master, or issue to be tried by jury, the question of lunacy shall be fully established by expert testimony, together with every other matter of fact that is affirmed by one party and denied by the other, and the same shall be heard and investigated in the manner prescribed by the provisions of the several acts concerning divorces.

Clause C. No divorce shall be granted under this act to any petitioner or libellant unless it be proved beyond a reasonable doubt that the husband or wife of the petitioner is hopelessly insane; Provided, however, That if the husband or wife has been for ten or more years an inmate of an asylum for the insane, it shall be conclusive proof of hopeless insanity.

Clause D. In case of the application of a husband for divorce from an insane wife, under the provisions of this act, the courts of common pleas of this Commonwealth, or the judges thereof to whom application is made, are hereby vested with full and complete authority to provide alimony for the support of such insane wife during the term of her natural life, by requiring the petitioner to file a bond, with surety or sureties if necessary, in such sum as they may direct, conditioned as aforesaid, before granting the divorce prayed for. And if the wife be the petitioner, and have sufficient means, the courts aforesaid, or the judges thereof, may provide for the support of the insane husband as in this section required for an insane wife; provided the insane husband has not sufficient estate in his own right for his support.

Clause E. This act shall in no way interfere or prevent an insane wife from obtaining a divorce from a husband, as provided in the act of April thirteenth, eighteen hundred and forty-three, to which this is a supplement.

Sec. 8, Act of April 13, P. L. 233, 1843, as amended by Sec. 1, Act of April 18, 1905, P. L. 211.

This act relates to procedure only and 'does not make insanity a ground for divorce. See *Baughman v. Baughman*, 34 Super. Ct. 271.

(b) Bill of Particulars.

33. Rule for Bill of Particulars. Judgment of Non Pros. In any suit or action in divorce, now pending, or that shall hereafter be brought, it shall and may be lawful for the respondent, at any time after the return-day of the subpoena, to enter a rule upon the libellant to furnish a bill of particulars of cause of action, as set forth in the libellant's petition filed; and if the same be not furnished by the libellant, within thirty days after service of notice of rule entered, it

shall be the duty of the court to enter a judgment or decree of non pros: Provided, That the court may, upon cause shown, extend the time in which to file a bill of particulars.

Sec. 1, Act of May 25, 1878, P. L. 156.

(c) Alimony.

34. **Order for Alimony.** Upon a decree a mensa et thoro, and the allowance of alimony shall have been made by any of the courts of common pleas of the respective counties of this Commonwealth, or hereafter may be made, it shall be the duty of the prothonotary of said court to enter the said decree on the judgment-docket of said court, which said decree when so entered, is hereby declared to be and shall remain a lien on the real estate of such respondent, until the same is satisfied, for the full amount that may be due up to the period of such satisfaction. And after such lien shall be so entered, it shall be the duty of the prothonotary of said court, upon affidavit by the libellant, that any payment under said decree, as the same has been made due and payable by the court, is due and unpaid, to issue execution, on the written order of the libellant, or her attorney, setting forth the amount so due and unpaid, which shall be directed to and served by the sheriff in like manner as executions upon judgment. And if the court should be of opinion that the said lien is not sufficient for the full or permanent security for payment of said decree, it shall have power and authority, on satisfactory proof being made that the respondent is possessed of sufficient estate, to order a decree and require that security, such as shall be determined and approved by said court, shall be given for the due payment of the said alimony according to the terms of said decree; the said security to be either by a bond, with sufficient sureties, or mortgage on real estate, taken in the name of the Commonwealth, to the use of the party entitled to said alimony, or by the deposit of money, to be invested as the court may deem proper, as may seem to the court sufficient to secure the payment of said alimony, as the same may fall due.

Sec. 1, Act of April 15, 1845, P. L. 455.

See also sections 3 and 10 of this chapter providing alimony in certain cases.

35. **Enforcement of Decree.** The said courts may enforce their decrees by attachment, on the return of which they may make such order, either to imprison or discharge the defendant, as the facts of the case may justify.

Sec. 2, Act of April 15, 1845, P. L. 455.

(d) Defense to Libel for Divorce.

36. **Defense to Charge of Adultery, Condonation and Recrimination.** In any action or suit commenced in the said court for a divorce for the cause of adultery, if the defendant shall allege and prove that the plaintiff has been guilty of the like crime; or has admitted the defendant into conjugal society or embraces, after he or she knew of the criminal fact; or that the said plaintiff (if the husband) allowed of the wife's prostitution, or received hire for them or exposed his wife to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defence and a perpetual bar against the same.

Sec. 7, Act of March 13, 1815, P. L. 150.

(e) Evidence.

37. **Records of Conviction of Adultery to be Evidence.** When either party shall have been convicted and sentenced for adultery, the records of the said conviction shall be received in evidence on any application for a divorce by the injured party.

Sec. 4, Act of March 13, 1815, P. L. 150.

38. **Competency of Libellant as Witness.** In all proceedings for divorce the libellant shall be fully competent to prove all the facts, though the respondent may not have been personally served with a libel, subpoena, or rule to take depositions, and may not be residing within the Commonwealth, but has been served by publication only.

Sec. 1, Act of June 8, 1911, P. L. 720, as amended by Sec. 1, Act of April 21, 1915, P. L. 154.

(g) Decree of Court.

39. **All Rights and Claims of Parties to Terminate.** It shall and may be lawful for the said courts, after hearing any cause commenced before them by virtue of this act, to determine the same as to law and justice shall appertain, by either dismissing the petition or libel, or sentencing and decreeing a divorce and separation from the nuptial ties or bonds of matrimony, or that the marriage is null and void. And after such sentence, nullifying or dissolving the marriage, all and every the duties, rights and claims accruing to either of the said parties at any time theretofore, in pursuance of the said marriage, shall cease and determine, and the said parties shall severally be at liberty to marry again, in the like manner as if they never had been married.

Sec. 8, Act of March 13, 1815, P. L. 150.

40. **Court to Award Costs.** The said court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to them shall appear to be reasonable and just.

Sec. 12, Act of March 13, 1815, P. L. 150.

(g) Appeals.

41. **Appeal to Supreme Court.** Either of the parties, in any suit or action now pending, or that shall hereafter be brought under this act, after the final sentence or decree given, may appeal therefrom to the supreme court of the proper district, upon entering into a recognizance before one of the judges of the court of common pleas before whom the cause shall have been tried, with at least one good surety, in a sum double the amount of the costs incurred, conditioned to prosecute the said appeal with effect, and the same appeal shall be prosecuted in the usual manner; and the judges of the supreme court shall transmit the record, with their judgment thereon, with all the proceedings, as in other cases, to the court below, to be carried into effect.

Sec. 13, Act of March 13, 1815, P. L. 150.

Sec. 7 of the Act of May 5, 1899, P. L. 248, supplementing the Act of June 24, 1895, P. L. 212, provides that appeals in proceedings for divorce shall be taken to the Superior Court.

42. **Appeal to Supreme Court.** Either of the parties in any suit or action for divorce now pending or that shall hereafter be brought, after the final sentence or decree, may appeal therefrom to the supreme court of the proper district upon entering into a recognizance before the prothonotary of the court of common pleas in which the cause shall have been tried, with at least one good surety, in a sum double the amount of the costs incurred, conditioned to prosecute the said appeal with effect; and the said appeal shall be prosecuted in the usual manner, and the judges of the supreme court shall transmit the record with their judgment thereon, with all the proceedings as in other cases, to the court below to be carried into effect: Provided, That where the respondent in any proceeding for divorce files with the prothonotary of the said court, an affidavit that such appeal is not intended for delay but because he or she believes injustice has been done, and that by reason of his or her poverty said respondent is unable to furnish the required recognizance aforesaid, such respondent shall be entitled to take such appeal the same as if the recognizance aforesaid was given.

Sec. 1, Act of June 11, 1891, P. L. 295.

So much of the above act as provides for the recognizance and affidavit in an appeal is repealed by the Act of May 19, 1897, P. L. 67.

43. **Appeals to Superior Court.** Appeals in proceedings for divorce, and joint appeals by labor claimants, under the act of June fifteenth, one thousand eight hundred and ninety-seven, Pamphlet Laws one hundred and fifty-four, shall be taken to the superior court.

Sec. 7, Act of May 5, 1999, P. L. 248.

(h) Record of Proceedings.

44. **Separate Index Docket for Parties to Divorce to be Kept by Prothonotary.** From and after the passage of this act, it shall be the duty of the prothonotaries of the several courts of common pleas in this Commonwealth to keep a separate index docket, in which shall be entered, in alphabetical order, the names of all persons who may be found to be lunatics or habitual drunkards, and also the names of all persons or parties against whom injunctions have been granted restraining them from selling or in any way encumbering real estate, and the names of all parties against whom decrees of divorce have been granted; and the court of common pleas of the proper county is hereby authorized and empowered, whenever it shall appear advisable, to direct the prothonotary of such county also to enter in the separate index docket, hereinbefore provided for, the names of all parties to suits or bills in partition; and the names of all parties to any ejectment suit or action to recover real estate, or to compel a conveyance thereof; and the names of all parties to adoption proceedings; and the name of all parties having their names or any part thereof changed, such indexing to be done in both the old and new names; and the names of all parties to all condemnation cases and proceedings in which viewers are prayed for or appointed; and the names of all parties to suits in equity affecting real estate in any wise; and the names of all parties to proceedings otherwise relating to real estate, which the court shall deem advisable to be entered therein, and such index shall then be called the Ejectment and Miscellaneous Index; and such indexes shall, after the preparation of the same, be kept in lieu and place of the separate ejectment and other indexes, heretofore authorized by law for the indexing of the matters herein enumerated and set forth, except such matters, proceedings, and actions at law, in equity or otherwise, as shall have been heretofore directed to be entered upon the direct and adsectum indexes and upon the judgment indexes required to be kept by the prothonotary.

Sec. 1, Act of May 22, 1878, P. L. 95, as amended by Sec. 1, Act of June 19, 1913, P. L. 532.

45. The entries on the indexes hereinbefore provided for shall include a reference to the number, term, and court wherein the proceeding was instituted, a brief description of the nature or character of the proceedings, date when the same was commenced, date of judgment or decree, and, in the case of ejectments and other proceedings in which the real estate affected is described, a brief description or reference to the location of the property affected thereby, sufficient to identify it without reference to the principal record of such proceeding, and such index may contain such other information as may be ordered to be entered therein by the court directing the preparation thereof.

Sec. 2, Act of June 19, 1913, P. L. 532.

46. After the adoption, preparation, and installation of the index dockets provided for in this act, the same shall be constructive notice to all persons of the matters contained in the proceedings so as aforesaid indexed, and no person shall be affected with notice of the pendency of any ejectment, or other proceeding hereinbefore provided to be indexed, unless the same shall be indexed as herein provided for.

Sec. 3, Act of June 19, 1913, P. L. 532.

ARTICLE V

FEES.

(a) Fees of Sheriff.

47. **In Counties Having a Population of not less than Two Hundred Thousand nor more than One Million Five Hundred Thousand Inhabitants.** From and after the passage and approval of this act, the fees to be received by sheriffs in counties of this Commonwealth having a population of not less than two hundred thousand nor more than one million five hundred thousand inhabitants, as computed by the last preceding United States census, shall be as follows:—

For receiving, docketing, and making return thereof, for each writ of scire facias, replevin, retorno habendo, summons, foreign attachment, attachment execution, subpoena in divorce, alias subpoena in divorce, satisfaction of mortgage, injunction, mandamus, quo warranto, bill in equity, rule, decree, order, citation, subpoena, series of interrogatories, proclamation, or notice of any kind in any civil action, issued out or any court or required by law or rule of court, one dollar.

For serving such processes or any statement of claim, personally or by copy, one dollar and fifty cents and mileage.

For serving the same by publication in one or more newspapers, as required by law or order of court, two dollars and seventy-five cents in each case, in addition to printer's bill.

For serving any rule, decree, process, or order of court not hereinbefore specifically provided for, he shall charge and receive the same official fees and legal costs as for a writ served in a similar way, as hereinbefore provided.

For mileage in serving or executing any of the writs, rules, decrees, orders, or processes, or performing any of the duties for service herein specified, and intended to be authorized by law, the sheriff shall be entitled to charge and receive, and may tax as official fees, ten cents a mile, for each mile actually traveled and necessary, and the same shall be allowed upon each separate writ, rule, order, decree, process, or service performed: Provided, That he shall not receive more than one mileage, where the plaintiff and defendant, in two or more contemporaneous writs, are the same.

Part of Sec. 1, Act of April 9, 1915, P. L. 54, as amended by Act of May 2, 1919, P. L. 110.

48. **When Payable.** All official fees and legal costs, which are or shall be charged and received by the Sheriff, shall be payable upon demand. In case he does not demand such costs in advance, he shall file with each return he makes an itemized list of said fees and costs; and, if no exceptions be filed to the same within thirty days from the time of filing the same, said fees and costs shall be considered taxed and confirmed absolutely and become a judgment in law; and the said sheriff may issue an execution and collect the same without further suit.

Sec. 2, Act of April 9, 1915, P. L. 54, as amended by Act of May 2, 1919, P. L. 110.

49. **In Counties Having a Population of less than One Hundred and Thirty Thousand Population.** From and after the passage of this act, the fees to be received by the sheriffs of this Commonwealth, in all the counties which, according to the United States decennial census taken last before the beginning of the term of the said sheriff, which contained a population of less than one hundred and thirty thousand inhabitants, shall be as follows:—

For receiving, making endorsements thereon, docketing, and making returns thereof, to each writ, rule, process, decree, order, bill in equity, citation, statement, or notice, issued out of any court, one dollar.

For service, personally or by copy, each writ of scire facias, replevin, foreign attachment, attachment, attachment execution injunction, mandamus, quo warranto, partition, inquisition, or other writ, each bill in equity, summons, rule, process, decree, order, citation subpoena in divorce, statement of claim, series of interrogatories, proclamation, one dollar for the first service, and twenty-five cents for every other party or defendant served, and twenty-five cents for each copy served or posted, in addition to mileage; or for serving the same by publication in one or more newspapers, when required by law or order of court, two dollars and seventy-five cents in each case, in addition to the printer's bill.

For each service of a subpoena, fifteen cents and mileage.

For traveling expenses or mileage in serving or executing any of the writs, rules, orders, decrees, processes, or performing any of the duties or services herein specified, and intended to be done or authorized by law, the sheriff shall be entitled to receive, and have taxed as costs, six cents a mile for each mile actually traveled and necessary; the same to be allowed on each separate writ, rule, order, process, or service performed: Provided, That he shall not receive more than one mileage where the plaintiff and the defendants or plaintiffs and defendants, in two or more contemporaneous writs to process, are the same: Provided further, For conveying prisoners to the penitentiary, house of correction, or reformatories, or any insane person to an asylum, he shall receive the sum of three dollars per day for each day necessarily spent, with mileage of six cents per mile, circular, for each mile necessarily traveled; and for each assistant allowed by the court, two dollars and fifty cents per day, with same mileage; to be paid by the county.

For serving any rule, process, decree, or order of court not hereinbefore specifically for, the sheriff shall receive one dollar and mileage.

Sec. 1, Act of June 20, 1911, P. L. 1072.

This act has been declared unconstitutional in *Renno v. Juniata Co.* 24 Dist. 619,—42 Pa. C. C. 671; *Harpe v. Wyoming Co.* 24 Dist. 554; *Jones v. Chester Co.* 21 Dist. 742; *Meredith v. Bucks Co.* 12 Pa. J. L. Rep. 14; *Hochard v. Somerset Co.* 22 Dist. 751; *Glass v. Northumberland Co.* 22 Dist. 753; *Meyers v. Northampton Co.* 22 Dist. 757.

50. When Payable. That all sheriff's costs and fees shall be due and payable when the services are performed; and it shall be lawful for him to demand and receive from the party instituting the proceeding, or any party liable for the costs thereof, all unpaid sheriff's fees, and costs on the same, before he shall be obliged by law to make return thereof; and in case he does not choose to collect his fees in

this manner, he shall file with each return he makes a correct itemized list of his costs, on or before the return day thereof, which costs shall be taxed by the clerk of the court or prothonotary.

Sec. 2, Act of June 11, 1911, P. L. 1072.

51. In Counties not Otherwise Provided for. From and after the passage of this act, the fees to be received by sheriffs in this Commonwealth shall be as follows:—

For receiving, making endorsements thereon, docketing and making return thereof, to each writ, rule, process, decree, order, bill in equity, subpoena, citation, statement or notice issued out of any court, one dollar.

For serving personally or by copy, each writ of scire facias, replevin, foreign attachment, attachment, attachment execution, injunction, mandamus, quo warranto, partition, inquisition or other writ; each bill in equity, summons, rule, process, decree, order, citation, subpoena, subpoena in divorce, statement of claim, series of interrogatories, proclamation, or notice of any kind issued out of any court, one dollar for the first service, and fifty cents for every other defendant or other party served, and forty cents for each copy served or posted in addition to mileage; or for serving the same by publication in one or more newspapers, when required by law or order of court, two dollars and seventy-five cents in each case, in addition to printer's bill.

For serving any rule, process, decree or order of court, not hereinbefore specially provided for, one dollar, in addition to mileage.

For the execution of any matter directed to the sheriff, or authorized by law or rule of court, or for services not herein provided for, the sheriff shall receive the same fees as for similar services herein provided for.

Part of Sec. 1, Act of July 11, 1901, P. L. 663.

52. For traveling expenses or mileage in serving or executing any of the writs, rules, orders, decrees, processes, or performing any of the duties or services herein specified, and intended so to be or authorized by law, the sheriff shall be entitled to receive and have taxed as costs six cents a mile for each mile actually traveled and necessary; the same to be allowed on each separate writ, rule order, decree, process, or service performed. He shall not receive more than one mileage where the plaintiff and defendant, or plaintiffs and defendants, in two or more contemporaneous writs are the same; nor shall he receive more than one mileage when conducting two or

more prisoners at one time to or from a place of detention or correction, whether he is authorized by one or more writs.

Part of Sec. 1, Act of July 11, 1901, P. L. 663, as amended by Act of June 1, 1915, P. L. 671.

53. When Payable.... All sheriff's costs shall be due and payable when the services are performed, and it shall be lawful for him to demand and receive from the party instituting the proceeding or any party liable for the costs thereof, all unpaid sheriff's fees on the same before he shall be obliged by law to make return thereof; and in case he does not choose to collect his fees in this manner, he shall file with each return he makes an itemized list of his costs, on or before the return day thereof, and if no exceptions are filed to the same on or before the next ensuing return day, the same shall be considered taxed and confirmed absolutely; and the said sheriff may issue an execution to collect the same, without further suit.

Sec. 2, Act of July 11, 1901, P. L. 663.

(b) Fees of Prothonotary.

54. The fees to be received by the several prothonotaries of the courts of common pleas and of the district courts of this Commonwealth, shall be as follows:

Subpoena in divorce or alias subpoena, one dollar. All other proceedings in divorce, except subpoenas for witnesses, or commission to take testimony, two dollars and fifty cents.

Commission to take testimony and entering return, one dollar.

Issuing subpoena under seal with two names, thirty cents. Every name after the first, three cents.

Part of Act of April 2, 1868, P. L. 3.

This act does not extend to the Counties of Philadelphia, Beaver and Washington. The fees of Prothonotaries in Philadelphia County are regulated by the Act of May 1, 1907, P. L. 142, as amended by Act of May 5, 1911, P. L. 184. The fees of Prothonotaries in the Counties of Beaver and Washington are regulated by the Act of February 22, 1821, P. L. 55, 7 Sm. L. 372, and the supplements thereto.

55. For Counties of Beaver and Washington. The fees to be paid to the prothonotaries of the courts of common pleas shall be as follows:

Subpoena or bill of divorce, seventy-five cents.

All other proceedings on petition for divorce excepting subpoenas for witnesses, two dollars.

Issuing subpoena and seal, twenty-five cents.

Each name after the first, two cents.

Application for maintenance or alimony, one dollar.

Part of Act of February 22, 1821, P. L. 55:

It was made lawful for the prothonotary of Beaver County to tax and receive in addition to the amount allowed under Act of February 22, 1821, P. L. 55, an increase of fifty per centum upon the amount of such fees by Act of March 1, 1865, P. L. 259, and the same increase was allowed the prothonotary of Washington County by the Act of March 12, 1866, P. L. 171.

56. For Counties Having a Population of Over One Hundred and Fifty Thousand and Under One Million Inhabitants. That the fees to be received by the several prothonotaries of the courts of common pleas of this Commonwealth, in counties having a population of over one hundred and fifty thousand and under one million, shall be as follows:

Petition for divorce, order thereon, and subpoena in divorce, including docketing same, four dollars.

Receiving, disbursing, and accounting for deposit in divorce, one dollar.

Alias subpoena in divorce, one dollar.

Application for maintenance or alimony, one dollar.

Filing and docketing rule for final decree, one dollar.

Filing and docketing motions and rules, and other pleadings in divorce, each, fifty cents.

Entering decree in minute book docket, and indexing in index docket, one dollar.

Certificate of divorce, under seal, two dollars.

Part of Sec. 1, Act of May 12, 1911, P. L. 301, as amended by Sec. 1, Act of May 23, 1913, P. L. 315.

57. In Counties Having a Population over Eight Hundred Thousand and less than One Million Five Hundred Thousand Inhabitants. The fees to be received by the prothonotary of the courts of common pleas of this Commonwealth in counties having over eight hundred thousand and less than one million five hundred thousand inhabitants, according to the last preceding United States census, should be as follows:—

Filing and docketing libel, issuing subpoena and entering sheriff's return, one dollar and twenty-five cents.

Issuing alias subpoena and entering sheriff's return, one dollar and twenty-five cents.

All subsequent docket entries, including certified copy of decree, three dollars and fifty cents.

Part of Sec. 1, Act of May 3, 1915, P. L. 184.

58. In Counties Having a Population of not less than One Million Four Hundred Thousand Inhabitants. The fees to be received by the several prothonotaries of the courts of common pleas of this Commonwealth shall be as follows:—

Subpoena or alias subpoena in divorce, one dollar.

Filing and docketing libel in divorce, one dollar.

Application for maintenance or alimony, one dollar.

Filing and docketing motions and rules and other pleadings in divorce, each fifty cents.

Proclamation, one dollar and fifty cents.

Certificate of divorce under seal, three dollars and fifty cents.

Order of publication, one dollar.

Entering decree in minute book and docket, each, fifty cents.

Indexing in divorce index, twenty-five cents.

Commission to take testimony and entering return, one dollar.

Notifying each party of return of commission when required, twenty-five cents.

Issuing subpoena under seal, twenty-five cents.

The provisions of this act shall not apply to counties having a population of less than one million four hundred thousand, as computed by the last preceding United States census.

Part of Sec. 1, Act of May 1, 1907, P. L. 142, as amended by Sec. 1, Act of May 5, 1911, P. L. 184.

ARTICLE VI

VALIDATION OF DIVORCES

59. Certain Divorces Validated. In all cases where divorces have been decreed by the courts of this Commonwealth having jurisdic-

tion, for the offence of adultery, and no appeal has been taken therefrom within the time prescribed by law, such divorces, so decreed, shall be deemed good and valid, if the offence shall have been committed within this Commonwealth, and the libellants have resided therein one year or more previous to the application therefor, although, at the time of the commission of such offence, the libellants and respondents may have been residents of another state: Provided, That in cases where the respondents resided out of this Commonwealth at the time of the preferment of the libels, personal notice shall have been given to them.

Sec. 1, Act of Feb. 27, 1847, P. L. 169.

60. **Certain Divorces Validated.** In all cases where divorces have been heretofore granted by the courts of common pleas, under the provisions of an act, approved the eighteenth day of April, Anno Domini one thousand nine hundred and five, entitled "An act to amend section eight of the act, approved the thirteenth day of April, one thousand eight hundred and forty-three, entitled "An act to convey certain real estate, and for other purposes," so as to extend its provisions to the husband or wife of a lunatic or non compos mentis, and to further regulate the procedure in actions for divorce," on the ground of hopeless insanity, in which the libellant therein complied with all the provisions of said act, that the said divorce shall be legal and valid, and binding upon the parties thereto.

Sec. 1, Act of May 3, 1909, P. L. 390.

It would seem that this section violates Sec. 7, Art. III of the Constitution, prohibiting the passage of local and special legislation granting divorces.

61. **Certain Divorces Validated.** All divorces granted since the first day of June, one thousand nine hundred and fifteen, and all proceedings for divorce now pending, are hereby made good and valid, notwithstanding the fact that the subpoena issued pursuant to the petition or libel in any such case was signed by the prothonotary; Provided, That all other requirements of law have been complied with, and that the procedure in every other respect has been regular.

Sec. 1, Act of May 11, 1921, P. L. 499.

62. **Former Services Validated.** Whenever, heretofore, any subpoena in divorce has been regularly issued according to law, and the sheriff of the proper county has served such subpoena personally on the respondent therein, any time prior to the return day thereof; or where the sheriff of the proper county has, at any time prior to such return day, made oath to a return of non est inventus to such subpoena, whether such sworn return be filed with the prothonotary before or after such return day; that, in all cases, such personal service

shall be deemed lawful and valid, and such return of non est inventus, and all proceedings in divorce, otherwise valid in law, based on such service or return, are hereby validated and made good in law.

Sec. 1, Act of April 6, 1911, P. L. 53.

See also latter part of Act of May 8, 1919, P. L. 164, validating services of subpoena. Sec. 20 of this chapter.

ARTICLE VII

MISCELLANEOUS PROVISIONS.

63. **Actions by and Against Married Women.** Hereafter a married woman may sue and be sued civilly, in all respects, and in any form of action, and with the same effect and results and consequences, as an unmarried person; but she may not sue her husband, except in a proceeding for divorce, or in a proceeding to protect and recover her separate property; nor may he sue her, except in a proceeding for divorce, or in a proceeding to protect or recover his separate property; nor may she be arrested or imprisoned for her torts.

Sec. 3, Act of June 8, 1893, P. L. 344, as amended by Sec. 1, Act of March 27, 1913, P. L. 14.

64. **Husband and Wife Competent Witnesses in Suits for Protection or Recovery of Separate Property.** In any proceeding brought by either the husband or wife to protect and recover the separate property of either, both shall be fully competent witnesses, except that neither may testify to confidential communications made by one or the other, unless this privilege be waived upon the trial.

Sec. 4, Act of June 8, 1893, P. L. 344, as amended by Sec. 2, Act of March 27, 1913, P. L. 14.

65. **Money and Property in Partition Proceedings to Belong to Divorced Wife.** In all cases of proceedings in the orphans' court in partition, wherein a wife has made or shall hereafter make her declaration, in pursuance of the 48th section of the act of March 29th, Anno Domini 1832, of her desire that the money secured to her under the said proceedings shall be paid to her husband, and subsequent to the filing of the said declaration, and before the actual payment of the said money, the said parties shall have been, or shall thereafter be lawfully divorced from each other, the said money so as aforesaid secured shall be and remain the property of the said wife, notwithstanding the said declaration, and shall be legally collectible by her in her own name and for her own use.

Sec. 1, Act of April 13, 1869, P. L. 28. Partly repealed by Act of June 7, 1917, P. L. 360.

66. **Marriage of Respondent and Correspondent Prohibited.** The wife or husband who shall have been guilty of the crime of adultery, shall not marry the person with whom the said crime was committed, during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or affect, or render illegitimate, any children born of the body of the wife during coverture.

Sec. 9, Act of March 13, 1815, P. L. 150

67. **Divorced Adulteress Co-Habiting with Paramour not to Alienate Lands, etc.** When any woman shall be divorced as aforesaid, and shall afterwards openly cohabit, at bed and board, with the person named in the petition or libel, and proved to be partaker in her crime, she is hereby declared to be incapable to alienate, directly or indirectly, any of her lands, tenements or hereditaments; but all deeds, wills, appointments and conveyances thereof, shall be absolutely void and of none effect, and after her death, the same shall descend and be subject to distribution in like manner as if she had died seised thereof intestate.

Sec. 10, Act of March 13, 1815, P. L. 150.



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